

**IN THE SUPREME COURT OF NOVA SCOTIA**

**BETWEEN:**

**JUNE BUTLER, ERNESTINE CAMERON, ALICE BENVIE,  
and JAMES DUGUID, JR.**

**PLAINTIFFS**

**- and -**

**MARLENE BIRD and JAMES W. DUGUID, SR., as  
represented by his Guardian, Marlene Bird**

**DEFENDANTS**

**Justice C. Richard Coughlan**

**Sydney, Nova Scotia**

**S.N. No. 104514**

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**LIBRARY HEADING**

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[Cite as: *Butler v. Bird*, 2002 NSSC 189]

**HEARD:** At Sydney, Nova Scotia, before the Honourable Justice C. Richard Coughlan, on February 26, 27 and 28, 2002 and final submission April 6, 2002

**DECISION:** July 25, 2002

**SUBJECT:** Deeds and Wills - Validity - Presumption of Undue Influence

**SUMMARY:** James W. Duguid, Sr. died on August 8, 1997. His daughter, Dorothy LeDrew looked after Mr. Duguid as long as her health permitted. Mrs. LeDrew died December 10, 1994. In 1990, Mr.

Duguid made a will which, except for a small gift to his church, left his estate to his daughter, Dorothy LeDrew. At the same time he deeded the boarding house he owned in Sydney, Nova Scotia to himself and Dorothy LeDrew as joint tenants. After Mrs. LeDrew's death, Mr. Duguid made a new will replacing his daughter with his granddaughter, Marlene Bird, daughter of Dorothy LeDrew, as beneficiary. He also made a deed conveying the boarding house to himself and Marlene Bird as joint tenants. The plaintiffs, the other children of Mr. Duguid, seek to have the deeds and wills set aside.

**ISSUES:** Was Mr. Duguid mentally competent at the time of the execution of the deed and will in 1990 and the deed and will in 1994?

Was the relationship between Mr. Duguid and Dorothy LeDrew such as to give rise to a presumption of undue influence?

Was the relationship between Mr. Duguid and Marlene Bird such as to give rise to a presumption of undue influence?

If the presumption of undue influence exists, has it been rebutted?

**RESULT:** It is clear from the evidence Dorothy LeDrew was the family member who looked after Mr. Duguid as he aged. Mr. Duguid's needs increased and, as long as she was able, Dorothy met those needs. Marlene Bird assisted her mother in helping Mr. Duguid and continued to assist him after Dorothy's death. Mr. Duguid was mentally competent at the time of execution of the deeds and wills in 1990 and in 1994. The relationships of both Dorothy LeDrew and Marlene Bird with Mr. Duguid were relationships which gave them the ability to dominate Mr. Duguid's will as set out in *Geffen et al. v. Goodman et al.* (1991), 81 D.L.R. (4th) 211 (S.C.C.) and, therefore, triggered a presumption of undue influence. There was no undue influence exercised and, therefore, the presumption was rebutted. Action dismissed.

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.  
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